IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.966 OF 2007
IN
NOTICE OF MOTION NO.286 OF 2007
IN
S.C.SUIT (STAMP) NO.314 OF 2007
WITH
CIVIL APPLICATION NO.1272 OF 2007
WITH
CIVIL APPLICATION NO.1324 OF 2007

M/s. Homecare Retail Marts ..Appellants.
v.
M/s. Harsh Kaushal Developers ..Respondents.

Mr.A.M.Saraogi, adv. for the Appellants.

Mr.S.U.Kamdar Sr. Counsel i/by Purnand & Co. , adv. for the Respondents.

CORAM: J.H.BHATIA,J.
DATE: 7th December,2007.

P.C.

1. After some discussion at bar, the learned counsel for both the parties agree that this appeal may be disposed off with following directions:

(1). Without prejudice to the contentions of each of the parties, the plaintiff/appellant shall deposit an amount of Rs.60 lakhs with the trial Court within 10 days from this day and the plaintiff/appellant shall also make payment of electricity charges as well as compensation as per the agreement regularly. As per the terms of the agreement between the parties, the dispute between the party shall be referred to an arbitrator.

Both the learned counsel agree that Mr.R.J.Kochar the retired judge of this Court shall be appointed as an arbitrator subject to his consent to be obtained by the parties. After appointment of arbitrator, the suit shall be withdrawn by the plaintiff. This direction shall continue till the matter is decided by the arbitrator or till any further directions that may be given by the Arbitrator. The defendant/respondent shall be allowed to withdraw the amount of Rs.60 lakhs, which is to be deposited by the plaintiff with the undertaking that the defendant, if so directed, shall bring back that money with interest, which shall not be less than 12 % per annum. In case, the defendant does not withdraw the amount as per the above direction within two months after the amount is deposited, the trial Court shall invest that amount in fixed deposit with some nationalised bank and the FDR shall be renewed till the disputes between the parties are not settled. In case, the plaintiff fails to deposit the amount within stipulated period, this appeal shall be deemed to have been dismissed. Subject to the plaintiff depositing amount as per this order, the defendant shall not create any obstacles in running of the business by the plaintiff in the premises.

2. Appeal stands disposed off with above directions.

3. As the appeal itself has been disposed off, the Civil Applications do not survive and stand disposed off accordingly.

(J.H.BHATIA,J.)